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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,689	03/31/2004	Anthony D. Cristillo	502615.20013	8605

26418 7590 03/30/2006

REED SMITH, LLP  
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NEW YORK, NY 10022-7650

EXAMINER

HUMPHREY, LOUISE WANG ZHIYING

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 03/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/814,689

Applicant(s)

CRISTILLO ET AL.

Examiner

Louise Humphrey, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 13-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>03/02/2006</u>  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Group I, claims 1-12, in the reply filed on 02 March 2006 is acknowledged. Because applicant did not distinctly and specifically point out any supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Information Disclosure Statement***

An initialed and dated copy of Applicant's IDS form 1449, filed on 02 March 2006, is attached to the instant Office action.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-12 are rejected under 35 U.S.C. §102(b) as being anticipated by Huang *et al.* (1995, filed in IDS).

The instant invention is a DNA molecule comprising a nucleic acid comprising a deletion mutation of the budding mediating motif of a viral protein encoded by the nucleic acid, wherein the viral protein is associated with the virus budding process; a

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composition comprising the DNA molecule; a vector comprising the DNA molecule; and a composition comprising the vector.

Huang *et al.* teaches the claimed plasmids of a molecular clone of HIV-1 containing truncation and substitution mutations in the PTAP budding mediating motif, wherein each codon, P, T, A, P, or the first two codons, PP, as well as the surrounding codons, are deleted (page 6813, Figure 2). The plasmids further comprise the claimed HIV-1 protein Pol. The nucleic acid containing the mutations is in the claimed vector (page 6811, right column). Thus, the instant invention is anticipated by Huang *et al.*

Claims 1-7 and 10-12 are rejected under 35 U.S.C. §102(b) as being anticipated by Craven *et al.* (1999).

The instant invention is summarized above.

Craven *et al.* teaches an SIV-derived vector containing deletion mutations in the PPPY motif in the matrix protein of Vesicular Stomatitis Virus, a member of the rhabdovirus family. In the mutants, either the first P or the Y codon of the PPPY motif is deleted by amino acid substitution (page 3360, Materials and Methods). The vector further comprises an additional viral protein, a truncated Gag protein of Rous Sarcoma Virus, an avian retrovirus (abstract). Therefore, the plasmid encoding the M-Gag chimeric protein contains deletions in codons surrounding the budding-mediating motif. Thus, the instant invention is anticipated by Craven *et al.*


**Remarks**

No claim is allowable.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louise Humphrey, Ph.D., whose telephone number is 571-272-5543. The examiner can normally be reached on Mon-Fri, 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902.



Louise Humphrey, Ph.D.  
Patent Examiner  
20 March 2006



JEFFREY STUCKER  
PRIMARY EXAMINER